Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

IMPLEMENTATION OF THE LOCAL COMPETITION PROVISIONS IN THE TELECOMMUNICATIONS ACT OF 1996

CC DOCKET NO. 96-98

REPLY COMMENTS OF MUNICIPAL UTILITIES

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EXECUTIVE SUMMARY

Municipal Utilities' Reply Comments are intended to emphasize certain of points raised in their Initial Comments.

First, the contention that the Commission should consider preemption of local or state government laws in this rulemaking is unwarranted. The statute mandates a case-by-case approach to this issue, not a national rule on unacceptable state or local laws. Municipal Utilities continue to assert that this proceeding is not the proper forum in which to categorize or otherwise specify those local or state laws that are inconsistent with the 1996 Act.

Second, with respect to the issue of establishing national interconnection standards, Municipal Utilities contend that the adoption of *minimum* national standards constitutes a sensible public policy approach and should be adopted by the Commission. The statute envisions an active and continuing state role in the interconnection process, and does not relegate to states only the job of enforcing detailed national standards. The adoption of minimum national standards would strike an appropriate balance between federal and state governments, as well as among the conflicting commenters in this proceeding.

Third, the disagreement among commenters regarding a national pricing standard serves to support Municipal Utilities' position that a national pricing standard is inappropriate and that pricing issues should be left to the states.

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In accordance with the schedule set forth in the Commission's April 19, 1996, Notice of Proposed Rulemaking, Municipal Utilities submit their first set of Reply Comments in this proceeding.[1] As explained in their Initial Comments, Municipal Utilities is an unaffiliated group of municipalities and publicly-owned electric distribution utilities.[2]

The Commission has received more than 10,000 pages in comments on the issues raised in the NPRM. This overwhelming response speaks to the importance of the issues as well as the diversity of approaches toward addressing the questions raised in the NPRM. Municipal Utilities nonetheless continue to believe that the positions taken in their Initial Comments remain appropriate and reasonable, and urge the Commission to adopt them.

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[1] Municipal Utilities are in the process of reviewing the second round of initial comments, filed on May 20, 1996, and have not yet determined whether they will file a second round of reply comments.

[2] The group , consists of: Public Utilities Department, Anaheim, California; Department of Water and Power, Los Angeles, California; Municipal Light Department, Belmont, Massachusetts; Paxton Municipal Light Department, Paxton, Massachusetts; Templeton Municipal Light, Templeton, Massachusetts; Clarksdale Public Utilities, Clarksdale, Mississippi; Board of Commissioners of Public Works, Greenwood, South Carolina.; Harrisonburg Electric Commission, Harrisonburg, Virginia; City of Manassas, Virginia; and City of Philippi, West Virginia.

I. PREEMPTION OF STATE/LOCAL GOVERNMENT LAWS

POSITION: THE COMMISSION SHOULD NOT IN THIS RULEMAKING SPECIFY LOCAL OR STATE LAWS THAT ARE INCONSISTENT WITH THE 1996 ACT.

Municipal Utilities noted in their Initial Comments that while, "as a broad generalization," this rulemaking might help to identify the types of local and state laws that may be preempted under Section 253(d), the Commission should not use this proceeding as the vehicle for identifying specific categories of preempted legislation. The reason for this position is simple: Congress has mandated that preemption decisions be made on a case-by-case basis, and not globally, *i.e.*, through a national rulemaking.

Nevertheless, several cable companies have filed initial comments calling for national preemption standards. For example, Cox Communications argues (Initial Comments at 59) that "it is appropriate to specify regulations that will not ordinarily be deemed to violate Section 253." TCI Communications seeks to give content to such regulations, arguing (Initial Comments at 16) that state or local governments may not exercise their control over rights-of-way in a manner which "makes it unreasonably difficult or costly for carriers to provide service." Comcast (at 13) has also complained of cities which require that new entrants file an application with the city and negotiate rights-of-way agreements because of the delays in the process.

In and of themselves, these comments reflect the impracticality of issuing national rules regarding the preemption of state and local laws. There is simply no practical way the Commission can decide which rules "make it unreasonably difficult or costly for carriers to provide service" without looking at the individual context. With respect to Comcast's example, the Commission cannot determine when an application process for new

entrants is "unreasonable" without looking at the particular city's needs for information and the city's time needs in processing and approving the application. In sum, it is wholly impractical to apply national, broad standards regarding what is "reasonable," nor is it possible to develop workable standards that are sufficiently detailed to be applicable to every situation in which there is a claim that a requirement is unreasonable because of difficulty, delay, or cost.

II. MINIMUM NATIONAL STANDARDS

POSITION: THE ADOPTION BY THE COMMISSION OF *MINIMUM* NATIONAL INTERCONNECTION STANDARDS IS CONSISTENT WITH THE 1996 ACT, SENSIBLE PUBLIC POLICY, AND A LOGICAL MIDDLE GROUND BETWEEN THE MAJOR POSITIONS TAKEN IN THIS PROCEEDING.

As the Commission has itself explained, a key issue in this proceeding is whether to adopt explicit national interconnection standards. The Initial Comments have been strongly divided on this point and basically fall into two camps. The "incumbent local exchange carriers" ("ILECs") have urged the Commission not to adopt stringent national rules, and to leave interconnection issues to the negotiating parties and the States. The long distance companies, cable companies and competitive access providers urge the adoption of stringent, detailed national standards as the means to ensure competition.

Municipal Utilities agree with those commenters who contend that some national standards are necessary to prevent ILECs from stonewalling the process of opening LEC services to competition. *See, e.g.,* U.S. Department of Justice ("DOJ") Comments at 11-12. However, Municipal Utilities do not buy into the notion that the adoption of detailed national rules will solve all of the competitive concerns associated with the tele-

communications industry. Municipal Utilities contend that the better course is to preserve existing state efforts to promote (if not require) needed interconnections, while ensuring that those states which have not yet taken action on this subject (or have taken less than competitively efficient actions) are brought up to a national, minimum level.

The position advocated by Municipal Utilities (Initial Comments at 6-10) provides a logical, middle ground between these two viewpoints that is consistent with the structure established in the 1996 Act. Municipal Utilities have urged the Commission to adopt *minimum,* but significant, national interconnection standards, permitting states to adopt more stringent, innovative standards and take primary responsibility for handling interconnection disputes. Municipal Utilities have explained that state regulatory commissions should take the leading role in this area because they have been at the forefront of this issue and can take into account geographic and regional technological differences. National minimum standards should incorporate a comparability requirement, obligating ILECs to offer new service providers the ability to interconnect on terms equivalent to those used by the incumbent with respect to adjacent LECs or between the LEC's own facilities. As explained in Municipal Utilities' Initial Comments (at 8-9), this standard would be consistent with the obligation imposed by the Federal Energy Regulatory Commission upon transmission providers in the electric utility industry.

As framed, Municipal Utilities' position both preserves the state role in interconnection issues while ensuring the implementation of standards consistent with the 1996 Act. The statute acknowledges the key role to be played by state commissions with respect to interconnection standards. Section 251(d)(3), pertaining to the implementation of interconnection obligations, establishes that

> In prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a state commission that —
>
> (A) establishes access and interconnection obligations of local exchange carriers;
>
> (B) is consistent with the requirements of this section; and
>
> (C) does not substantially prevent implementation of the requirements of this section and purposes of this part.

Thus, the 1996 Act does not permit the Commission to override or preempt actions taken by a state which are consistent with the Act. In other words, the Commission is not authorized to set national standards which would preempt state actions that are consistent with the pro-competitive thrust of the statute.

As envisioned by Municipal Utilities, as of their effective date the national minimum standards would become the interconnection standards in those states that have not established interconnection requirements. In this way, advancement of the competitive objectives sought by the statute and the FCC would not be delayed pending state-by-state action on interconnection requirements. Those states that have adopted interconnection regulations would be able to continue to enforce those rules, provided that they were at least as stringent as the national minimum standards. To the extent state standards were not as stringent as those adopted by the Commission, the states should be given the opportunity to seek a waiver from the FCC of the obligation to comply with the national rules. Such a waiver could be justified by showing (a) that the specific conditions in a particular state do not merit adoption of a specific national minimum; or (b) that the state has already established a workable regulatory structure that fosters telecommunication interconnections.

Municipal Utilities are not alone in advocating that states take a central role in issuing interconnection standards. Various consumers groups have commented in favor of preserving the states' authority to develop interconnection standards, contending that the preservation of this authority will benefit consumers. For example, the Grey Panthers (on behalf of itself and several other organizations) notes (Initial Comments at 4) that state jurisdiction "increases the likelihood that local public interest groups will participate in the proceedings. A strong state role also allows for the development of innovative approaches ..."

Municipal Utilities' position is also in line with the positions taken by the U.S. Department of Justice and Consumer Federation of American and Consumers Union (CFA and CU, respectively). DOJ has advocated (Initial Comments at 17-18) that the Commission should establish minimum standards for technically feasible interconnections, but permit states to require interconnection at additional points. Similarly, CFA and CU (at 4) recognize that "[w]hile the 1996 Act states that competition is national policy, it also says that the states have leeway to implement that policy."

III. PRICING STANDARDS

POSITION: THE COMMISSION SHOULD NOT TRY TO CREATE A GENERIC, NATIONAL PRICING STANDARD.

Municipal Utilities have urged (Initial Comments at 16-21) that a national pricing standard is inadvisable and that pricing should be left to the state commissions. In support of this position, we noted that the statute itself provides for interconnection pricing

by state commissions, and that for reasons of flexibility and expertise, such issues are better handled at the state level.

A number of commenters have nevertheless argued for a national pricing standard, advocating in particular the adoption of the "Total System Long Run Incremental Cost" (TSLRIC). *E.g.*, AT&T, Initial Comments at 47-48; Competitive Telecommunications Association, Initial Comments at 67; DOJ, Comments at 27-33. Municipal Utilities note, however, that there is not agreement as to the meaning and application of the TSLRIC pricing methodology.

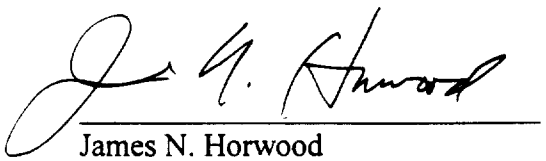
That commenters cannot agree on a single TSLRIC pricing methodology strongly suggests that the selection of a national pricing methodology is a near impossible task, and one in which the Commission should not involve itself. Instead, the selection of a pricing standard is far better handled, as it has been in the past, through a process of negotiation at the state level among those parties involved in the particular interconnection proceeding.

Finally, one issue with which Municipal Utilities agree with DOJ and other commenters is that universal service issues should be addressed independent of the pricing principles that will apply to interconnection pricing. As DOJ notes (Comments at 58-59), "the Commission and the States should seek new approaches for achieving universal service and other social goals that they consider to be important. These are a variety of mechanisms available for this purpose that, in our view, can be structured to minimize economic distributions and operate in a competitively neutral manner."

CONCLUSION

Municipal Utilities urge the Commission's adoption of interconnection requirements consistent with the positions presented here.

Respectfully submitted,



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